

REMARKS

Applicant respectfully submits this Amendment in response to the Final Office Action mailed on July 12, 2010.

In the Office Action, claims 1-4 and 6-8 were rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over McNary (U.S. Patent No. 5,899,200) in view of Dehaven (U.S. Patent No. 6,003,205); and claim 5 was rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over McNary and Dehaven in view of Pollet (U.S. Publication No. 2004/0089292).

By this Amendment, Applicant has amended claims 1 and 4, and cancelled claims 5 and 8. After entry of this Amendment, claims 1-4, 6, and 7 remain pending. Of those, claim 1 is the only independent claim.

Applicant respectfully traverses the rejections and submits that the proposed claims are in condition for allowance, for at least the reasons set forth below.

Rejection of Claims 1-8 Under § 103(a)

Claims 1-4, 6, and 7 stand rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over McNary in view of Dehaven. Applicant respectfully disagrees. Claims 5 and 8 are cancelled by this Amendment.

The Office Action asserts that McNary discloses all of the elements of claim 1 except, "that the cap can slide on the strap." (Office Action, page 2.) The Office Action asserts that Dehaven teaches, "a cap 22 that slides on a strap 16," and asserts that, "it would have been obvious to...modify McNary's cap and strap with a cap that slides on a strap, as taught by Dehaven, for the purpose of providing a more basic strap that

doesn't need to be folded." (Office Action, page 3.) Again, Applicant respectfully disagrees.

As a preliminary matter, Applicant notes that claim 1 has been amended to recite that, "said cap comprises a lug for preventing removal of the cap from the strap." (Emphasis added). Applicant respectfully submits that none of the cited references discloses this feature, at least because Dehaven discloses a cap configured to be removed from its strap, as will be described in more detail below.

Even if McNary were modified to include the cap of Dehaven, in the way suggested by the Examiner, any resulting combination would still not disclose each limitation of claim 1. Dehaven discloses that the slide tab 25 on bottom cap 20 can be selectively inserted or removed through the keyhole slot 29 of the bottle handle strap 16, in order to attach or remove the top bottle cap 12 to the bottom bottle cap 20. (Col. 4, ll. 17-19.) However, claim 1 recites "a cap which can be placed in a position to substantially occlude said mouthpiece... [and] said cap comprises a lug for preventing removal of the cap from the strap."

Dehaven clearly discloses that cap 22 is removable from the strap 16, both in figures 3 & 4, and by reference to "free end 17." (Col. 4, lines 29-30.) Dehaven also does not disclose any type of "lug." Therefore, Dehaven fails to teach or suggest, "said cap comprises a lug for preventing removal of the cap from the strap," as recited in claim 1.

In addition, Dehaven does not disclose a cap that can be placed in a position to substantially occlude the mouthpiece. In fact, neither of Dehaven's caps 12 or 20 is configured to occlude a mouthpiece, because the top cap of Dehaven "has an

opening...adapted for extending a top spout of a bottle received by the top cavity.”

(Abstract) Accordingly, any proper combination of McNary and Dehaven fails to disclose “a cap which can be placed in a position to substantially occlude said mouthpiece... [and] said cap comprises a lug for preventing removal of the cap from the strap,” as recited in claim 1.

Finally, claim 1 recites that the cap is “arranged to slide on said strap such that said cap must translate away from said mouthpiece prior to the pivoting of said strap.” Dehaven, however, does not disclose a cap arranged to slide on the strap, such that the cap must translate away from the mouthpiece prior to pivoting of the strap, as claimed. Rather, Dehaven merely discloses that insertion of slide tab 25 into keyhole slot 19 links the top and bottom caps 12, 20 so that a bottle received by the caps can be held between the caps by handle strap 16. (Col. 5, ll. 1-6.) Dehaven suggests that the keyhole slot 19 is only engaged with and slidable on slide tab 25 once caps 12, 20 are positioned on a bottle, to adjust a space formed between the handle strap 16 and a side of the bottle 11. (Col. 5, ll. 7-17.) In other words, Dehaven does not even suggest sliding the slide tab 25 in keyhole slot 19 for the purpose of translating a cap away from a mouthpiece or other opening. Accordingly, any proper combination of McNary and Dehaven would still fail to disclose a cap “arranged to slide on said strap such that said cap must translate away from said mouthpiece prior to the pivoting of said strap,” as recited in claim 1.

In sum, even if the strap 16 and caps 12, 20 of Dehaven were combined with the inhaler of McNary (which Applicant does not believe would be obvious), such a combination would not disclose each and every element of independent claim 1.

Rather, the combination of McNary and Dehaven would only result in an inhaler having a mouthpiece cap 9 attached by strap 19 (of McNary), as well as a carrying strap 16 connected between two opposing caps 12, 20 (of Dehaven), neither of which is configured to *"occlude said mouthpiece," "slide on said strap such that said cap must translate away from said mouthpiece prior to the pivoting of said strap,"* or comprise *"a lug for preventing removal of the cap from the strap,"* as recited in independent claim 1. Accordingly, the combination of McNary and Dehaven fails to teach or suggest each and every element of independent claim 1, as required under 35 U.S.C. § 103(a). Applicant thus respectfully requests that the rejection be withdrawn.

Claims 2-4, 6, and 7 depend from independent claim 1 and are therefore allowable over McNary and Dehaven at least due to their dependence from independent claim 1, and for their additional recitations of patentable subject matter.

Regarding claim 5, the limitations of which are now incorporated into independent claim 1, the Examiner cites Pollet as disclosing "a strap that underlies the body and substantially follows the contours thereof." (Office Action, page 5.) However, Pollet fails to cure the deficiencies of McNary and Dehaven as discussed in relation to claim 1 above. Accordingly, claim 1 is allowable over McNary, Dehaven, and Pollet, at least due to the reasons discussed above.

Accordingly, Applicant respectfully requests that all of the rejections of claims 1-4, 6, and 7 be withdrawn, and that the claims be allowed.

Conclusion

Applicant respectfully requests that this Amendment under 37 C.F.R. § 1.116 be entered by the Examiner, placing claims 1-4, 6, and 7 in condition for allowance.

Applicant submits that the proposed amendment of claims 1 and 4 do not raise new issues or necessitate the undertaking of any additional search of the art by the Examiner, since all of the elements and their relationships claimed were either earlier claimed or inherent in the claims as examined. Therefore, this Amendment should allow for immediate action by the Examiner.

Furthermore, Applicant respectfully points out that the final action by the Examiner presented some new arguments as to the application of the art against Applicant's invention. It is respectfully submitted that the entering of the Amendment would allow the Applicant to reply to the final rejections and place the application in condition for allowance.

Finally, Applicant submits that the entry of the amendment would place the application in better form for appeal, should the Examiner dispute the patentability of the pending claims.

In view of the foregoing remarks, Applicant submits that this claimed invention, as amended, is neither anticipated nor rendered obvious in view of the prior art references cited against this application. Applicant therefore requests the entry of this Amendment, the Examiner's reconsideration and reexamination of the application, and the timely allowance of the pending claims.

Please grant any extensions of time required to enter this response and charge any additional required fees to Deposit Account 06-0916.

Respectfully submitted,

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